

SUBJECT: Modifying the conditions under which agricultural land may be annexed

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 5 ayes — Mowery, Orr, Geren, Pickett, Ritter
0 nays
4 absent — Zerwas, Callegari, R. Cook, Y. Davis

WITNESSES: For — Regan Beck, Texas Farm Bureau; Ed Small, Texas and Southwestern Cattle Raisers Association, Melvin Kreusler

Against — Dana Burghdoff, City of Fort Worth; Matt Scott, Rockwall City Council; William E. Wood, City of San Antonio; (*Registered, but did not testify*: Charles V. England, City of Grand Prairie; Shanna Igo, Texas Municipal League; Larissa Philpot, City of Nacogdoches)

BACKGROUND: Local Government Code, ch. 43 governs municipal annexation. Sec. 43.002 prohibits a municipality from ordering the discontinuation of existing legal uses on annexed land.

Sec. 212.172. enables a governing body of a municipality with fewer than 1.9 million people to enter into a written contract with an owner of land that is located in the extraterritorial jurisdiction of the municipality to:

- guarantee the continuation of the extraterritorial status of the land and its immunity from annexation by the municipality;
- extend the municipality's planning authority over the land by providing for a development plan under which certain general uses and development of the land are authorized;
- authorize enforcement by the municipality of certain municipal land use, development, and environmental regulations;
- provide certain infrastructure for the land;
- provide for the terms of any annexation of the land and specify the uses and development of the land before and after annexation, if annexation is agreed to by the parties; and
- include other lawful terms and considerations the parties consider appropriate.

Development agreements between municipalities and landowners are binding on the participating parties and successors.

DIGEST:

CSHB 1472 would add sec. Local Government Code, sec. 43.035 to specify the authority of a municipality to annex land appraised for tax purposes for agriculture or wildlife management use. A municipality would be prohibited from annexing such land unless the municipality offered to make a development agreement with the landowner to:

- ensure the continuation of the extraterritorial status of the area; and
- authorize the enforcement of all regulations and planning authority of the municipality that did not interfere with the agricultural or wildlife management use of the area.

If the landowner declined to enter into the development agreement, the municipality could annex the land.

For the purposes of determining eligibility for annexation, an area adjacent to land under a development agreement provided by the bill also would be considered adjacent to the municipality engaging in the agreement. The bill would not apply to land located in the extraterritorial jurisdiction of a municipality with a population of 1.9 million or more (Houston).

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007. The bill would affect any annexation for which the first hearing occurred on or after the bill's effective date.

**SUPPORTERS
SAY:**

CSHB 1472 would protect farming and ranching practices threatened by municipal annexation of agricultural land. Rapid development on the fringes of many municipalities has resulted in the destruction of much valuable blackland and other farmland in the state. Farmers and ranchers facing annexation have little recourse, and while current law provides for the continuation of existing land uses on annexed lands, many practices related to agriculture are prohibited in municipal jurisdictions. Annexed agricultural land is subject to various city codes and other prohibitions that take effect in incorporated jurisdictions. Current statutory protections for agricultural land are insufficient to preserve the full range of agricultural operations.

Annexed agricultural land is subject to additional municipal taxes for services that seldom apply. Annexation is beneficial for developments that rely on services municipalities provide, including water and wastewater, infrastructure, utilities, police protection, emergency medical services, and parks and recreation. Taxes are levied on property owners to fund the provision of these services for residents that use them. However, the needs of agricultural property owners differ from those of residential, commercial, and industrial property owners. Farming and ranching practices are sustainable without services provided by municipalities.

CSHB 1472 would provide a compromise that recognizes both the value of protecting agricultural land and the legitimate needs of municipalities to expand their jurisdictions. The bill would enhance the options available to agricultural owners facing annexation beyond the status quo of accepting annexation or negotiating a development agreement with a municipality. Agricultural property owners would be permitted to accept a limited agreement that allowed their property to remain in a municipality's extraterritorial jurisdiction while providing for regulation of land uses adjacent to agricultural plots.

Existing statutes prohibit a municipality from annexing land that is not immediately adjacent to its jurisdiction and may be separated by agricultural tracts. The bill would add provisions permitting municipalities to annex noncontiguous land adjacent to agricultural plots that take advantage of the statutory provisions the bill would add. This provision would allow municipalities to plan comprehensively around agricultural tracts that were allowed to remain in extraterritorial jurisdictions and thereby would minimize any greater restrictions on a municipality's ability to expand.

**OPPONENTS
SAY:**

This bill would subject municipalities to development negotiations with agricultural land owners outside established annexation processes, which could place a burden on municipal resources and comprehensive planning efforts.

Current statutory provisions grant ample protections to agricultural land facing annexation. Municipalities currently are prohibited from discontinuing agricultural uses or imposing undue restrictions on agricultural operations. Agriculture Code, ch. 251 exempts agricultural operations from municipal nuisance regulations. The exemption extends to agricultural structures. Local Government Code, sec. 229.002 prohibits

municipalities from regulating the discharge of firearms on plots of land that meet minimum acreage standards. Also, agricultural land already is substantially protected from taxation by significant reductions in appraised value. Additional taxes due from municipalities are comparatively small for land claiming agricultural exemptions.

The bill would grant agricultural land owners unnecessary leverage over municipal annexation processes and could impede a municipality's ability to establish development regulations prospectively. Municipalities need to plan in advance for the provision of services. Granting agricultural land extraterritorial status could interfere with the municipality's ability to plan for expansion by creating islands of unincorporated land in rapidly expanding areas. Allowances for the annexation of non-contiguous areas adjacent to agricultural plots would help reduce this effect, but would not completely offset the additional encumbrances on municipal planning initiatives.

Agricultural land is subject to free market incentive structures that can make the continuation of agricultural operations impractical. Expanding development and the attending escalation of land values render many agricultural uses economically unsustainable. Agricultural land often is sold off for the purposes of developments that are much more capital intensive. Municipalities have a major stake in this economic process and should not be constrained from trying to regulate development that follows these economic patterns. The bill would not change the basic market pressures that apply to agricultural operations.

OTHER
OPPONENTS
SAY:

This bill would apply to lands that had been appraised for property tax purposes as used for agricultural or wildlife management. This provision could be problematic, as uses classified for property tax purposes can take time to reflect changes in the actual use of the land. The bill should provide that any filed development plans for the land would result in the immediate dissolution of agricultural status for the purposes set forth in the bill.

NOTES:

The committee substitute added language that would allow an area adjacent to land subject to a development agreement under the bill to be considered adjacent to the municipality engaging in the agreement.